



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2004

Mr. Jack Steele
Houston-Galveston Area Council
P. O. Box 22777
Houston, Texas 77227-2777

OR2004-8452

Dear Mr. Steele:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210247.

The Houston-Galveston Area Council (the "council") received a request for a specified report. We understand you to represent that the Transportation Security Administration ("TSA") has classified the portion of the responsive information related to aviation facilities and the aviation system as sensitive security information ("SSI") and that the council will therefore withhold this information pursuant to TSA's instructions. *See* 49 CFR §§ 1520.9(a)(3) (requiring person subject to part 1520 to "[r]efer requests by other persons for SSI to TSA or the applicable component or agency within DOT or DHS"); *see generally English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). You claim that the remaining portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act, the Seventy-eighth Legislature added sections 418.176 through 418.182 to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. You assert that the submitted information is confidential under section 418.177, which provides as follows:

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Gov't Code § 418.177. You explain that the submitted information consists of a "Strategic Wireless System Study (SWISS) developed by RCC Consultants, Inc. to evaluate the [City of Houston's] two-way radio systems in several departments, including the City's Aviation, Fire, Police, Emergency Center, and Public Works and Engineering Departments." You also state that the

study was commissioned to evaluate the current state of the City's radio communication systems by identifying particular vulnerabilities and providing recommendations for maintaining or improving the systems to promote more effective response times in the event of a mass tragedy resulting from terrorist or other related criminal activity.

Further, you assert that the "SWISS report is essential to the region's efforts to address homeland security issues and to strengthen vulnerable infrastructure" and that release of the report "puts critical infrastructure at potential risk by revealing areas of potential weakness and vulnerability." Based on these representations and our review, we agree that the submitted information was created for the council for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. *See* Gov't Code § 418.177(1). Furthermore, we agree that the submitted information is a risk or vulnerability assessment. *See* Gov't Code § 418.177(2). We therefore conclude that the submitted information is confidential under section 418.177, and it must be withheld under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining argument.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 210247

Enc: Submitted documents

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(w/o enclosures)